

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

KEITH LAMAR,

Petitioner,

-vs-

TODD ISHEE, Warden,

Respondent.

:

Case No. 1:04-cv-541

:

District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz

:

REPORT AND RECOMMENDATIONS

This case is before the Court on Respondent's Motion to Dismiss the Petition herein on Statute of Limitations Grounds (Doc. No. 23). Petitioner responds with a calculation of the time to file based on *Bronaugh v. Ohio*, 235 F.3d 280 (6th Cir. 2000). Respondent replies that Bronaugh may be about to become bad law because of the pendency of *Lopez v. Wilson*, 366 F. 3d 430 (6th Cir. 2004) (granting rehearing *en banc*).

The Magistrate Judge has allowed the instant Motion to remain ripe for decision for a number of months because he believes that a decision in *Lopez* may well affect the continued vitality of the holding in *Bronaugh*. However, it is inappropriate to continue to hold the matter in light of the delay in a decision in *Lopez*.

Because the Petition was timely under *Bronaugh* and *Bronaugh* remains the law in this

Circuit¹, the Motion to Dismiss should be denied without prejudice to its renewal after *Lopez* is decided.

March 31, 2005.

s/ **Michael R. Merz**
Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

¹Respondent argues that *Bronaugh* was wrongly decided. That this Court is without authority to reach that conclusion is sufficiently well established as not to require citation.